

Exhibit 1

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 herself and others similarly situated

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SANTA CLARA

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 Case: 1-14-CV-272100

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12 KELLY ROMERO, on behalf of herself and
 others similarly situated,

Case No.

13 Plaintiff,

CLASS ACTION COMPLAINT FOR:

14 v.

15 FLOWERS BAKERIES, LLC, dba
 16 NATURE'S OWN, a Georgia limited
 liability company, and DOES 1 through 50,
 17 inclusive,

18 Defendant.

- (1) Unlawful Business Practices (Cal. Bus. & Prof. Code § 17200 et seq.)
- (2) Unfair Business Practices (Cal. Bus. & Prof. Code § 17200 et seq.)
- (3) Fraudulent Business Practices (Cal. Bus. & Prof. Code § 17200 et seq.)
- (4) Misleading Advertising (Cal. Bus. & Prof. Code § 17500 et seq.)
- (5) Untrue Advertising (Cal. Bus. & Prof. Code § 17500 et seq.)
- (6) Violation of the Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 et seq.
- (7) Restitution Based on Quasi-Contract / Unjust Enrichment
- (8) Common Law Fraud
- (9) Negligent Misrepresentation
- (10) Breach of Contract

28 DEMAND FOR JURY TRIAL

By Fax

1 Plaintiff KELLY ROMERO (hereinafter "Plaintiff"), on behalf of herself and all others
 2 similarly situated, complains of Flowers Bakeries, LLC, dba Nature's Own, a Georgia limited
 3 liability company, and DOES 1 through 50, inclusive, as follows:

4 INTRODUCTION

5 1. Plaintiff brings this action pursuant to Code of Civil Procedure § 382 against
 6 Defendant Flowers Bakeries, LLC, dba Nature's Own ("Flowers"), on behalf of all consumers in
 7 the United States or, alternatively, California within four years of the filing of this lawsuit who
 8 have purchased the following varieties of Flowers' Nature's Own products:

9 (a) Nature's Own Soft Variety Breads, including:

- 10 i. Nature's Own Honey Wheat Bread
- 11 ii. Nature's Own 100% Whole Wheat Bread
- 12 iii. Nature's Own 100% Whole Grain
- 13 iv. Nature's Own Honey Oat Bread
- 14 v. Nature's Own Whole Grain Sugar Free Bread
- 15 vi. Nature's Own 100% Whole Wheat With Honey
- 16 vii. Nature's Own Double Fiber Wheat Bread
- 17 viii. Nature's Own Honey 7 Grain Bread

18 (b) Nature's Own Premium Specialty Breads, including:

- 19 i. Premium Specialty 100% Whole Grain Bread
- 20 ii. Premium Specialty 12 Grain Bread
- 21 iii. Premium Specialty Healthy Multi-Grain Bread
- 22 iv. 100% Whole Wheat Specialty Bread
- 23 v. Honey Wheat Specialty Bread
- 24 vi. Premium Specialty Double Fiber Wheat Bread

25 (c) Nature's Own Buns & Rolls, including:

- 26 i. 100% Whole Wheat Sandwich Rolls
- 27 ii. 100% Whole Wheat Hot Dog Rolls
- 28 iii. Whitewheat® Bread Hamburger Buns

- iv. Whitewheat® Bread Hot Dog Buns
- v. Butter Hamburger Buns
- vi. Butter Hot Dog Buns

(d) Nature's Own Whitewheat® Bread

(e) Nature's Own Sandwich Rounds, including:

- i. 100% Whole Wheat Sandwich Rounds
- ii. Healthy Multi Grain Sandwich Rounds
- iii. 100% Whole Grain Sandwich Rounds

(f) Nature's Own Reduced Calorie Breads, including:

- i. 40 Calorie 9 Grain Bread
- ii. 40 Calorie Honey Wheat Bread
- iii. 40 Calorie Wheat Bread
- iv. 40 Calorie White Bread

2. The foregoing products are collectively referred to in this Complaint as the "Misbranded Products."

3. The labels for each of these products carry representations about the ingredients or alleged healthful properties of the products that are intended to induce, and have induced, consumers to purchase the products. These representations, however, are false, misleading, and unlawful for the reasons alleged below.

4. Plaintiff alleges that Flowers' conduct violates California's Business and Professions Code sections 17200, et seq. (the Unfair Competition Law, or "UCL"), California's Business and Professions Code sections 17500, et seq. (the False Advertising Law, or "FAL"), and the Consumers Legal Remedies Act of the California Civil Code sections 1750, et seq. (the "CLRA"). Plaintiff also alleges claims on behalf of consumers nationwide for common law fraud, negligent misrepresentation, breach of contract, and restitution on the basis of quasi-contract/unjust enrichment.

5. Plaintiff seeks damages and restitution stemming from Flowers' false labeling and advertising. Plaintiff also seeks declaratory and injunctive relief to ensure that Flowers shall

1 remove any and all false or misleading labels and advertisements relating to the Misbranded
 2 Products and to prevent them from making similar representations in the future.

3 PARTIES

4 6. Nature's Own is a brand manufactured by Flowers Bakeries, LLC, a Georgia
 5 limited liability company with its principal place of business in Thomasville, Georgia. Flowers
 6 Bakeries markets and sells its Nature's Own brand products throughout 79 percent of the United
 7 States, with concentrations in the West, Southwest, and Southeast. Flowers Bakeries markets and
 8 sells its Nature's Own brand products through grocery and other retail stores throughout
 9 California.

10 7. The true names and capacities, whether individual, corporate, associate, or
 11 whatever else, of the defendants sued herein as Does 1 to 50, inclusive, are currently unknown to
 12 Plaintiff, who therefore sues these defendants by such fictitious names under Code of Civil
 13 Procedure § 474. Plaintiff is informed and believes and thereon alleges that each of the defendants
 14 designated herein as Does is legally responsible in some manner for the unlawful acts referred to
 15 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
 16 capacities of the defendants designated herein as Does when their identities become known. (As
 17 used herein, "Defendant" refers to Flowers Bakeries, LLC, and its brand Nature's Own, and Does
 18 1 to 50, inclusive.)

19 8. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
 20 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
 21 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
 22 each Defendant are legally attributable to the other Defendants.

23 9. Venue is proper in this judicial district pursuant to Code of Civil Procedure § 395.5
 24 because the obligations giving rise to liability occurred in part in the County of Santa Clara, State
 25 of California.

26 COMMON FACTUAL ALLEGATIONS

27 10. Defendants produce packaged, pre-sliced breads and other baked goods. The
 28 Misbranded Products were postured to appeal to health-conscious consumers most obviously and

1 directly through its the brand name—"Nature's Own"—together with representations which
2 appear on the front labels that the breads contain "no artificial preservatives, colors and flavors,"
3 suggesting a product that is natural, wholesome, and healthy. (See photos attached hereto as
4 Exhibit A.)

5 11. The product labels also depict stalks of wheat and pots of honey. Additionally,
6 some of Nature's Own bread products explicitly claim to be "All Natural" on the front labels. (See
7 *ibid.*) Defendant has fought trademark infringement cases to safeguard its brand name in large
8 part because it knows the power of the words "Nature's Own" on consumers in an increasingly
9 health-conscious marketplace.

10 12. Defendants reinforce this theme by boasting on the front labels of the Misbranded
11 Products about the healthful qualities of its bread. Throughout the class period Defendants have
12 prominently made claims on their product labels and through advertisements that the Misbranded
13 Products contain "no artificial preservatives, colors or flavors" and "no high fructose corn syrup,"
14 or statements of similar import, cultivating a wholesome and healthful image in an effort to
15 promote the sale of these products. These claims appear prominently on the front of the packages,
16 underneath the brand name Nature's Own. (See photos attached hereto as Exhibit B.)

17 13. For example, the front label of Nature's Own 100% Whole Wheat bread declares,
18 "No Artificial Preservatives, Colors or Flavors," "No High Fructose Corn Syrup," "Made with
19 Real Honey," and "14 Grams of Whole Grains per slice," and "Heart Healthy." (See photos
20 attached hereto as Exhibit C.) Nature's Own Whitewheat® contains similar representations, as
21 well as the statement "Healthy White." (See photos attached hereto as Exhibit D.)

22 14. Furthermore, Defendants label some of its white breads, including Honey Wheat
23 Bread and Whitewheat® Bread, as wheat breads in order to mislead consumers who are in the
24 market for whole grain wheat. These consumers are part of a growing demographic that
25 recognizes the nutritional benefits of whole grains over refined grains that lack fiber and nutrients
26 as the result of processing. However, Defendants deliberately take advantage of this demographic
27 by marketing these white breads as wheat and suggesting through labeling statements and
28 vignettes that they are wholesome and healthy—what consumers would associate with whole

1 wheat. Defendants make this connection explicit for consumers. For example, the company's
 2 website proclaims, "Nature's Own Honey Wheat offers the perfect blend of wholesome wheat,
 3 sweetened with a touch of honey. A slice or two of this bread each day is a delicious way to add
 4 healthy grain to your diet."¹ But, as explained below, the reality is quite different.

5
 6 **Defendants' Suggestion That the Misbranded Products Are
 "Nature's Own" Is False and Deceptive.**

7 15. As alleged above, Defendants suggest through the combination of its highly
 8 guarded brand name, coupled with vignettes and claims appearing on the product labels, that the
 9 Misbranded Products are a natural food product, therefore connoting that the Misbranded Products
 10 are somehow more healthy and wholesome, and in fact some of Defendants' products are
 11 explicitly labeled "All Natural."

12 16. Defendants' representations are false or, at best, deceptive and misleading.
 13 Webster's New World Dictionary defines "natural" as "produced or existing in nature; not
 14 artificial or manufactured."²

15 17. Although the Food and Drug Administration ("FDA") does not directly regulate the
 16 term "natural," the FDA has established a policy defining the outer boundaries of the use of that
 17 term by clarifying that a product is not natural if it contains color additives, artificial flavors, or
 18 synthetic substances.³ Specifically, the FDA states: "[T]he agency will maintain its policy (Ref.
 19 32) regarding the use of 'natural,' as meaning that nothing artificial or synthetic (including all
 20 color additives regardless of source) has been included in, or has been added to, a food that would
 21 not normally be expected to be in the food." 58 Fed. Reg. 2302, 2407 (Jan. 6, 2003).

22 18. This policy is consistent with consumers' understanding of the word "natural."
 23 Consumers understand "natural" to exclude synthetic ingredients, food additives, or chemical
 24 preservatives. In a 2007 survey conducted by the Natural Marketing Institute (NMI) the majority
 25 of respondents believed that the term "natural" in a product label meant that the product contained

26 ¹ <http://www.naturesownbread.com/products/VarietyBreads/HoneyWheatBread/> (last accessed May 9,
 27 2014).

² *Webster's New World Dictionary of the American Language*, 2nd College Ed. (Simon & Schuster, 1984),
 28 "natural," definition no. 2 at p.947.

³ See <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm094536.htm> and
<http://www.fda.gov/AboutFDA/Transparency/Basics/ucm214868.htm>.

1 100 percent natural ingredients, no artificial flavors, no artificial colors, no preservatives, no
 2 chemicals, and a substantial percentage thought that it meant that the product was not highly
 3 processed. The majority of consumers believe that when a food product is labeled as “natural,” it
 4 means that “no artificial ingredients were used” (66% of consumers) “no artificial materials were
 5 used during processing” (65% of consumers), and “no GMOs were used” (64% of consumers).
 6 Even more consumers believe that food product labels should reflect that no artificial ingredients
 7 were used (86%), no artificial materials were used during processing (87%), and no GMOs were
 8 used (85%).⁴

9 19. Moreover, like the FDA, the United States Department of Agriculture (“USDA”),
 10 which regulates the labeling of meat and poultry, has also set limits on the use of the term
 11 “natural.” The USDA’s Food Safety and Inspection Service states that the term “natural” may be
 12 used on labeling of meat and poultry products so long as “(1) the product does not contain any
 13 artificial flavor or flavorings, color ingredient, or chemical preservative ... or any other artificial
 14 or synthetic ingredient, and (2) the product and its ingredients are not more than minimally
 15 processed.”

16 20. According to the USDA, “[m]inimal processing may include: (a) those traditional
 17 processes used to make food edible or to preserve it or to make it safe for human consumption,
 18 e.g., smoking, roasting, freezing, drying, and fermenting, or (b) those physical processes which do
 19 not fundamentally alter the raw product and/or which only separate a whole, intact food into
 20 component parts, e.g., grinding meat, separating eggs into albumen and yolk, and pressing fruits to
 21 produce juices.”⁵ However, “[r]elatively severe processes, e.g., solvent extraction, acid
 22 hydrolysis, and chemical bleaching would clearly be considered more than minimal processing.”⁶

23 21. Under USDA policy, a product cannot be labeled as being “natural” if an ingredient
 24 would significantly change the character of the product to the point that it could no longer be

25 ⁴ See Consumer Reports® National Research Center, Survey Research Report Food Labels Survey, 2014
 26 Nationally-Representative Phone Survey
<http://www.greenerchoices.org/pdf/ConsumerReportsFoodLabelingSurveyJune2014.pdf>.

27 ⁵ See the United States Department of Agriculture Food Standards and Labeling Policy book
 28 available at http://www.fsis.usda.gov/OPPDE/larc/Policies/Labeling_Policy_Book_082005.pdf (last
 visited December 18, 2013).

⁶ *Ibid.*

1 considered a natural product. Moreover, any product purporting to be “natural” must
 2 conspicuously identify any synthetic ingredients used on the label (e.g., “all natural ingredients
 3 except dextrose, modified food starch, etc.”). For example, a “turkey roast” cannot be called a
 4 “natural” product if it contains beet coloring but can still bear the statement “all natural ingredients
 5 modified by beet coloring.”⁷ Defendants do not, however, include any such limiting language on
 6 the Misbranded Products.

7 22. The terms “synthetic” and “artificial” closely resemble each other and in common
 8 parlance are taken as synonymous. The scientific community defines “artificial” as something not
 9 found in nature, whereas “synthetic” is defined as something man-made, whether it merely mimics
 10 nature or is not found in nature.⁸ In the scientific community, “synthetic” includes substances that
 11 are also “artificial,” but a synthetic substance also can be artificial or non-artificial.⁹ However, the
 12 common understanding of “artificial” resembles the scientific community’s definition of
 13 “synthetic.” Indeed Webster’s New World Dictionary defines “artificial” as “anything made by
 14 human work, especially if in imitation of something natural,” whereas “synthetic” is defined as
 15 “a substance that is produced by chemical synthesis and is used as a substitute for a natural
 16 substance which it resembles.”¹⁰

17 23. Congress has defined “synthetic” to mean “a substance that is formulated or
 18 manufactured by a chemical process or by a process that chemically changes a substance extracted
 19 from a naturally occurring plant, animal, or mineral sources, except that such term shall not apply
 20 to substances created by naturally occurring biological processes.” 7 U.S.C. § 6502(21). *See also*
 21 7 C.F.R. § 205.2 (defining, in USDA’s National Organic Program regulations, a “nonsynthetic” as
 22 “a substance that is derived from mineral, plant, or animal matter and does not undergo a synthetic
 23 process as defined in section 6502(21) of the Act (7 U.S.C. § 6502(21))”).

24 ///

25 ⁷ *Ibid.*

26 ⁸ Peter E. Nielsen, *Natural-synthetic-artificial!*, Artificial DNA: PNA & XNA, Volume 1, Issue 1
 (July/August/September 2010), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3109441/> (last
 27 visited December 18, 2013).

27 ⁹ *Ibid.*

28 ¹⁰ *See* Webster’s New World Dictionary of the American Language, 2nd College Ed. (Simon & Schuster,
 1984), “artificial,” definition SYN at p.79.

1 24. The labeling of products to suggest natural origin carries implicit health benefits
2 important to consumers—benefits that consumers are willing to pay a premium for over
3 comparable products that are not so labeled and marketed.

4 25. According to the NMI survey referenced above, 81 percent of respondents found
5 products claiming to be “natural” very/somewhat important when purchasing food or beverage
6 products. Significantly, the survey also found that package labeling was by far the most important
7 source of information influencing consumers’ purchasing decisions, especially among the health-
8 conscious segment of the population. According to another survey, the “majority of consumers
9 (59%)” check nutritional labels on products “to see if their food is natural.” The majority of
10 consumers, approximately 69%, believe it is important to choose food products that do not contain
11 artificial ingredients.”¹¹

12 26. Defendants have cultivated and reinforced a corporate image based on the natural
13 theme, which they have emblazoned on each and every one of the Misbranded Products.

14 27. However, Defendants’ representations are false owing the presence, until at least
15 2013, in the Misbranded Products of a highly suspect and controversial chemical additive—
16 azodicarbonamide, or ADA, also known as the “yoga mat” chemical.

17 28. Azodicarbonamide is a chemical used for rubber products—including, notably,
18 yoga mats, shoe soles, and plastic bottles: “The principal end use of azodicarbonamide is as a
19 blowing agent in the rubber and plastics industries. It is used in the expansion of a wide range of
20 polymers, including polyvinyl chloride, polyolefins, and natural and synthetic rubbers.”¹²

21 29. Significantly, ADA has been linked to asthma and skin irritation: “Evidence that
22 azodicarbonamide can induce asthma in humans has been found from bronchial challenge studies
23 with symptomatic individuals and from health evaluations of employees at workplaces where
24 azodicarbonamide is manufactured or used. There are also indications that azodicarbonamide may

25 ¹¹ See Consumer Reports® National Research Center, Survey Research Report Food Labels Survey, 2014
26 Nationally-Representative Phone Survey
<http://www.greenerchoices.org/pdf/ConsumerReportsFoodLabelingSurveyJune2014.pdf>.

27 ¹² See World Health Organization, Concise International Chemical Assessment Document,
28 Azodicarbonamide, R. Cary, S. Dobson, E. Ball at
<http://www.who.int/ipcs/publications/cicad/en/cicad16.pdf> (last accessed July 24, 2014).

1 induce skin sensitization.”¹³ ADA’s effects on overall human health and the effects of long term
 2 exposure have not been studied: “Data have been identified that indicate ethyl carbamate
 3 formation in consumer products such as bread and beer following the addition of
 4 azodicarbonamide. Exposure of the general public to azodicarbonamide could not be evaluated
 5 because of the lack of available data.”¹⁴ However, azodicarbonamide has been found to
 6 completely break down to form other chemicals, including semicarbazide, or SEM, which has
 7 been shown to increase the incidence of tumors in mice. Indeed, way back in 2005, the European
 8 Food Safety Authority (EFSA) assessed the risk from the use of ADA and banned its use in
 9 foodstuffs.

10 30. Bread, whether natural or not, can be made with ingredients other than
 11 azodicarbonamide. According to the FDA, the “use of [azodicarbonamide] as a whitening agent
 12 and dough conditioner is not necessary to make bread and there are alternative ingredients
 13 approved for use available.”¹⁵ Nevertheless Defendants used ADA in the Misbranded Products
 14 throughout the class period.

15 31. Additionally, Defendants explicitly label some of their breads “All Natural.” (See
 16 photo attached as Exhibit E.) This representation clearly conveys to consumers that the subject
 17 Misbranded Products contain absolutely no synthetic, artificial, chemical, or highly processed
 18 ingredients. Contrary to this representation, however, Defendants’ “All Natural” bread actually
 19 contains a host of such unnatural ingredients.

20 32. In particular, Defendants’ supposedly “All Natural” breads are made with
 21 “enriched” flour. As the ingredients list discloses, it is enriched with a number ingredients that are
 22 synthetically produced, including thiamin mononitrate, riboflavin, folic acid, niacin, and reduced
 23 iron. These breads also contain soybean oil, soy lecithin, calcium sulfate, and enzymes.

24 33. Folic acid is the synthetically-created chemical N-[4-[(2-amino-1,4-dihydro-4-
 25 oxo-6-pteridiny]methyl]amino]benzoyl]-L-glutamic acid. 21 C.F.R. § 172.345(a). Folic acid

26 ¹³ See World Health Organization, Concise International Chemical Assessment Document,
 27 Azodicarbonamide, R. Cary, S. Dobson, E. Ball at
<http://www.who.int/ipcs/publications/cicad/en/cicad16.pdf>.

28 ¹⁴ *Ibid.*

¹⁵ See <http://www.fda.gov/downloads/food/ingredientspackaginglabeling/foodadditivesingredients/ucm387975.pdf> (last accessed July 24, 2014).

1 differs from natural folate in numerous respects, including shelf-life and bio-availability. Even the
2 molecular structure of folic acid is different from natural folate.

3 34. Soybean oil uses unnaturally excessive processing and/or synthetic compounds or
4 pollutants to produce. Hexane is commonly used to make most oils. According to the USDA, all
5 soybean oil is processed with hexane. Whole soybeans are literally bathed in hexane to separate
6 the oils from the protein. Hexane is a byproduct of gasoline refining. It is a neurotoxin and a
7 hazardous air pollutant.¹⁶ It is also a synthetic substance.¹⁷ To produce the oils used in
8 Defendants' products, factory workers are exposed to this neurotoxin. Occupational exposure has
9 been linked to neurological disorders including polyneuropathy, optic nerve atrophy, narcosis, and
10 may contribute to the development of Leber hereditary optic neuropathy, a disease that causes loss
11 of vision. After the oil is removed from the proteins (commonly through hexane extraction), all
12 oils are further processed before they can be added as a food ingredient. *See, e.g.*, 21 C.F.R. §
13 184.1555(c)(1) (requiring all canola oil to be "fully refined, bleached, and deodorized") (emphasis
14 added). Such processing can include bleaching, deodorization, degumming to remove
15 phosphatides, and alkali refining to remove free fatty acids, colorants, insoluble matter and gums.
16 Each of these processing steps may use additional synthetic and hazardous compounds such as
17 phosphoric acid, ferric chloride, acid activated bleaching clay, nitrogen gas saturation, sodium
18 hydroxide, and Trysil, a manufactured hydrated silica. Additionally, soy products are typically
19 made from genetically modified soybeans, which is inconsistent with the "All Natural"
20 representation.

21 35. Thiamine mononitrate (C₁₂H₁₇N₅O₄S, CAS Reg. No. 532-43-4) is the
22 mononitrate salt of thiamine. It occurs as white crystals or a white crystalline powder and is
23 prepared from thiamine hydrochloride by dissolving the hydrochloride salt in alkaline solution
24 followed by precipitation of the nitrate half-salt with a stoichiometric amount of nitric acid. *See*
25 21 C.F.R. § 184.1878(a). Synthetically thiamin is usually marketed as thiamin hydrochloride or
26 thiamin mononitrate and is a made from Grewe diamine (a coal tar derivative) processed with

27 ¹⁶ *See* <http://www.cdc.gov/niosh/topics/organsolv/> and <http://www.epa.gov/ttn/atw/hlthef/hexane.html>.

28 ¹⁷ *See* U.S. International Trade Commission, Synthetic Organic Chemical Index, USTIC Pub. 2933 (Nov. 1995).

1 ammonia and other chemicals. No thiamin hydrochloride (often listed as thiamin HCL) or thiamin
 2 mononitrate is naturally found in food or the body (thiamin pyrophosphate is the predominant
 3 form in the body).

4 36. Lecithin is often referred to as “soy lecithin” because it is a byproduct of soybean
 5 oil (usually GMO-derived and thus not natural). Soy lecithin is manufactured using hydrogen
 6 peroxide (another synthetic chemical) and is typically used, as in the Mislabeled Products, as an
 7 emulsifying or leavening agent. Soy lecithin is defined as synthetic under 7 C.F.R. §
 8 206.605(b)(31).

9 37. Riboflavin is a synthetic compound. U.S. International Trade Commission,
 10 Synthetic Organic Chemical Index, USTIC Pub. 2933 (Nov. 1995). It is also a food coloring
 11 agent. E101.

12 38. Defendants also use raisin juice concentrate as a color additive in its “All Natural”
 13 breads, even though the use of color additives, regardless of source, is inconsistent with the
 14 labeling of a product as “natural.” See FDA Compliance Guide CPG Sec. 587.100 (“The use of
 15 the words ‘food color added,’ ‘natural color,’ or similar words containing the term ‘food’ or
 16 ‘natural’ may be erroneously interpreted to mean the color is a naturally occurring constituent in
 17 the food. Since all added colors result in an artificially colored food, we would object to the
 18 declaration of any added color as ‘food’ or ‘natural.’”).

19 39. Finally, Defendants also add “enzymes” to the Misbranded Products and conceal
 20 what enzyme is used, in violation of federal regulations.

21 **Defendants’ Breads Are Falsely Labeled to Suggest They Are Whole Wheat.**

22 40. The branding of Defendants’ bread as “Whitewheat” or “Honey Wheat” is also
 23 false and deceptive because such labels suggest that the products are whole wheat breads and
 24 therefore healthier when in fact they are merely white breads.

25 41. Since 2005 the Dietary Guidelines for Americans have advised consumers to
 26 “make at least half of your grains whole” because of the increased health benefits associated with
 27 whole grains, including a decreased risk of cardiovascular disease and Type 2 diabetes.”¹⁸ In

28 ¹⁸ *USDA Dietary Guidelines for Americans 2010*,
<https://www.cnpp.usda.gov/publications/dietaryguidelines/2010/policydoc/chapter4.pdf>

1 contrast, refined grains are considered less healthy than whole grains, and excessive consumption
2 of refined grains has been correlated with diabetes and a host of other metabolic disorders.¹⁹

3 42. Not surprisingly, consumers increasingly demand whole wheat bread vis-à-vis
4 white bread, and there has been a “steep decline in demand for white bread, off 20%[.]”²⁰ As a
5 result, more and more whole grain products enter the market each year.²¹ By 2017, the whole
6 grain food market is expected to be worth 27.6 billion dollars.²²

7 43. The massive growth in demand for whole grain products stems from their
8 perceived health benefits—American consumers consider whole grains to be the healthiest
9 category of food—because of their lack of refinement.²³ Studies show that Americans now seek to
10 live a natural lifestyle by consuming unprocessed foods.²⁴

11 44. The bread industry explicitly discussed the negative opinion of bread after the
12 Atkins era and holds that the “key to reversing the tide of public opinion about bread is clear...
13 The quicker we move to make the fresh bread category all about whole grains, the faster we will
14 be able to address the negative press we are getting from the critics of bread[.]”²⁵

15 45. The key to increasing sales generally in a culture taught to fear bread is to promote
16 whole grains—which Defendants misleadingly do through its labeling of their Honey Wheat and
17 Whitewheat Breads.

18 46. At the same time it is difficult for consumers to determine from a product name or
19 the appearance of a product the extent to which a product contains whole grains.

20 47. The US government advises consumers to look for breads that are at least 51
21 percent whole grain or contain at least 8 grams of whole grain per ounce.²⁶

22 ¹⁹ USDA, Dietary Guidelines for Americans 2010 at 36, available at <https://dietaryguidelines.gov>

23 ²⁰ Milling & Baking News, Bread Product Perspective, *Millers see opportunity for baking despite alarming sales trends*, pp. 29-30 (Feb. 21, 2012). See also <http://wholegraincouncil.org/newsroom/whole-grain-statistics>

24 ²¹ <https://www.foodnavigator-usa.com/Markets/Whole-grain-food-market-to-hit-27.6-billion-by-2017-with-US-leading-the-way>

25 ²² *Ibid.*

26 ²³ <https://wholegraincouncil.org/newsroom/whole-grain-statistics>

27 ²⁴ <https://events.fleishmanhillard.com/cart-to-kitchen-how-moms-navigate-the-grocery-store/>

28 ²⁵ Milling & Baking News, Bread Product Perspective, *Millers see opportunity for baking despite alarming sales trends*, pp. 1, 38 (Feb. 21, 2012). See also <http://wholegraincouncil.org/newsroom/whole-grain-statistics>

²⁶ HHS, USDA, *Dietary Guidelines for Americans 2010*, found at <http://www.cnpp.usda.gov/publications/dietaryguidelines/2010/policydoc/chapter4.pdf>

1 48. The average consumer assumes that wheat products contain large proportions of
2 whole grains and does not know, even if he or she reads the ingredient list, that for a product to be
3 whole wheat the term “whole wheat” must appear near the beginning of the ingredient statement.²⁷

4 49. Defendants deceptively label and market their Honey Wheat and Whitewheat
5 Breads to capitalize on consumer confusion through the use of the word “wheat” in the product
6 name. Defendants also call their ordinary white bread “Whitewheat” in an attempt to confuse
7 consumers who associate white wheat with a new lighter variety of whole wheat and further foster
8 confusion by labeling it “healthy white” bread.

9 50. In fact, neither Defendants’ Honey Wheat nor their Whitewheat Breads are whole
10 wheat bread or anything other than enriched white bread.

11 51. Under FDA regulations, the name for bread that is composed primarily of non-
12 whole wheat flour is simply “white bread” and not “white wheat” or “healthy white.” *See* 21
13 C.F.R. § 136.110.

14 52. If white bread contains permissible added vitamins and minerals or enriched flour,
15 the correct name is “enriched bread.” *See* 21 C.F.R. § 136.115. All enriched breads are white
16 breads. *See* 21 C.F.R. § 136.115.

17 53. A wheat description for bread is not appropriate when the bread is composed
18 primarily of white flour. *See* 21 C.F.R. §§ 136.11, 136.115. The only time wheat is permitted to
19 be used as part of the name of bread is for whole wheat bread. *See* 21 C.F.R. § 136.180.

20 54. The dough for whole wheat bread must be made entirely from whole wheat flour or
21 bromated whole wheat flour. *See* 21 C.F.R. §136.180. No ordinary flour is permitted to be used if
22 the product is called whole wheat bread. *Ibid.*

23 55. Defendants’ Honey Wheat and Whitewheat Breads, however, are not made entirely
24 or even predominately from whole wheat flour. As the ingredient statement demonstrates, there is
25 actually more sugar and honey in Defendants’ Honey Wheat than whole wheat:

26 Unbleached enriched flower (wheat flour, malted barley flour, niacin, reduced
27 iron, thiamin mononitrate, riboflavin, folic acid), water, honey, sugar, whole
28 wheat flour, rye flour, wheat bran, yeast, contains 2% of less of the following:
wheat gluten, salt, soybean oil, vinegar, cultured wheat flour, dough conditioners

²⁷ <https://wholegrainscouncil.org/newsroom/2012/02/abc-news-on-whole-grain-labeling>

(contains one or more of the following: sodium stearoyl lactate, calcium stearoyl-d-lactylate, monoglycerides and/or diglycerides, azodicarbonamide), yeast, food (ammonium sulfate), monocalcium phosphate, calcium sulfate, enzymes, soy flour, soy lecithin.

56. Similarly, Defendants claim that their Whitewheat Bread is a “Healthy White,” implying that the bread is made of a variety of whole grain that is lighter in color and milder in flavor.

57. “White wheat” refers to albino wheat, which is a whole grain.

58. Many consumers who dislike the mealy taste of whole wheat prefer white wheat as a more nutritious alternative.²⁸

59. However, as the ingredient statement shows, Nature’s Own Whitewheat actually contains no white wheat or indeed whole wheat of any kind, the primary ingredient being enriched flour:

Unbleached enriched flour (wheat flour, malted barley flour, niacin, reduced iron, thiamin mononitrate, riboflavin, folic acid), water, sugar, fiber (may contain soy, oat, cottonseed, and/or cellulose), wheat gluten, yeast, contains 2% of less of each of the following: calcium sulfate, soy flour, salt, calcium carbonate, soybean oil, cultured wheat flour, dough conditioners (contains one or more of the following: sodium stearoyl lactylate, calcium stearoyl lactylate, monoglycerides, mono and diglycerides, azodicarbonamide, enzymes, ascorbic acid), vinegar, guar gum, citric acid, ammonium sulfate, monocalcium phosphate, sodium citrate, soy lecithin, niacin, iron (ferrous sulfate), thiamine hydrochloride, riboflavin, folic acid, natamycin (to retard spoilage).

60. Defendants’ Honey Wheat and Whitewheat Breads are misbranded under Section 403(g) of the federal Food, Drug and Cosmetic Act because they should be named “enriched bread,” the standardized name required by regulation. *See* 21 C.F.R. § 136.115.

61. Under Federal Regulations, the proper name for bread that is composed primarily of white flour is white bread or enriched bread if enriched flour is used and/or required nutrients are added. *See* 21 C.F.R. §§ 136.11, 136.115.

62. The names Honey Wheat Bread and Whitewheat Bread, together with images of sheaves of wheat and pots of honey, create a false impression that the products have a significant amount of whole wheat, but Defendant’s Honey Wheat Bread contains more ordinary white flour,

²⁸ *See, e.g.*, <https://wholegrainscouncil.org/whole-grains-101/whole-white-wheat-faq> (explaining that white wheat is akin to albino wheat); *see also* Milling & Baking News, p. 6 (Feb. 21, 2012)(advertisement for Cargill’s “Horizon Milling’s WheatSelect white spring whole wheat flour).

1 water, honey, and sugar than whole wheat flour, and Defendant's Whitewheat Bread contains no
2 whole wheat at all.

3 63. Defendants knew or should have known that the names of their Honey Wheat and
4 Whitewheat Breads are deceptive and likely to mislead reasonable consumers, who did not receive
5 the benefit of their bargain when purchasing these breads. Nevertheless Defendants incorrectly
6 marketed these products as wheat breads to induce consumers to purchase them and have profited
7 from the deception.

8 **Allegations as to the Named Plaintiff**

9 64. Plaintiff is and, throughout the entire class period, was a resident of the State of
10 California. Through the class period Plaintiff has been concerned about her health and has
11 progressively tried to consume healthier foods, including breads. Increasingly, she tries to avoid
12 consuming foods that are not natural, such as foods containing synthetic, artificial, chemical, or
13 highly processed ingredients, and is willing to pay and has paid a premium for foods that are
14 natural and do not contain synthetic, artificial, chemical, or highly processed ingredients, and she
15 has endeavored to refrain from buying equivalent foods which are not natural and which do
16 contain artificial, chemical, or highly processed ingredients. Although she ate white breads in the
17 past, and continues to do so on occasion, she increasingly consumes more natural, whole wheat
18 breads.

19 65. During the class period Plaintiff purchased, among other products, Nature's Own
20 Honey Wheat Bread, Nature's Own Whitewheat® Bread, Nature's Own 100% Whole Wheat
21 Bread, and Nature's Own 100% Whole Wheat with Honey (the "Purchased Products") from
22 various markets throughout California, including but not limited to, markets in Santa Clara
23 County.

24 66. Before purchasing the Misbranded Products, Plaintiff read the labeling
25 representations identified above. Plaintiff relied on these representations and believed that she
26 was purchasing products that were free of synthetic, chemical, artificial, and highly processed
27 ingredients, and she believed, when purchasing Nature's Own Honey Wheat Bread and Nature's
28 Own Whitewheat® Bread, that these were wheat and not white breads. Plaintiff not only

1 purchased these products because of the identified representations, but she also paid more money
2 than she would have had to pay for other similar products that were not natural and that contained
3 synthetic, chemical, artificial, and highly processed ingredients, artificial flavoring, and chemical
4 preservatives or that were accurately labeled as white bread.

5 67. Indeed, had Plaintiff known that Defendants' products were not natural and
6 contained potentially dangerous chemical additives like azodicarbonamide, she would not have
7 purchased these products but would have purchased another brand that was truly natural and did
8 not contain undesirable chemicals. Plaintiff was repulsed to learn that she repeatedly consumed
9 breads which she thought to be natural but actually contained ADA. Similarly, Plaintiff would
10 have never bought Nature's Own Honey Wheat Bread and Nature's Own Whitewheat Bread had
11 she known that these were actually white breads, not whole wheat breads. In this way, Plaintiff
12 did not receive the products she bargained for and has lost money as a result in the form of paying
13 a premium for Defendants' products.

14 68. On or around May 9, 2014, Plaintiff sent a letter to Flowers Bakeries informing it
15 that it has engaged in unfair methods of competition and/or deceptive acts or practices, including
16 but not limited to violation of California Civil Code § 1770, in connection with the sale of the
17 Misbranded Products, and requested that it correct, repair, replace, or otherwise rectify its
18 unlawful conduct. Flowers Bakeries responded by denying liability and declining to correct,
19 repair, replace, or otherwise rectify its unlawful conduct. Because more than 30 days have elapsed
20 since the receipt of Plaintiff's letter, Plaintiff herein seeks seek actual, punitive, and statutory
21 damages as appropriate on behalf of herself and similarly situated consumers, as well as equitable
22 including injunctive relief.

23 CLASS ALLEGATIONS

24 69. Plaintiff brings this action on behalf of herself and those similarly situated as a
25 class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent the following
26 classes on behalf of a California or, where stated, nationwide class of consumers:

- 27 (1) All persons who purchased Nature's Own products containing azodicarbonamide
28 from four years prior to the filing of the Complaint and continuing to the present.

1 (2) All persons who purchased Nature's Own Honey Wheat Bread or Whitewheat
2 Bread from four years prior to the filing of the Complaint and continuing to the
3 present.

4 (3) All persons who purchased Nature's Own breads labeled "All Natural" from four
5 years prior to the filing of the Complaint and continuing to the present.

6 70. The class excludes counsel representing the class, governmental entities,
7 Defendants, any entity in which Defendants have a controlling interest, Defendants' officers,
8 directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and
9 assigns, any judicial officer presiding over this matter, the members of their immediate families
10 and judicial staff, and any individual whose interests are antagonistic to other putative class
11 members.

12 71. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
13 modify the class description with greater particularity or further division into subclasses or
14 limitation to particular issues.

15 72. This action has been brought and may properly be maintained as a class action
16 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
17 of interest in the litigation and the class is easily ascertainable.

18 **A. Numerosity**

19 73. The potential members of the class as defined are so numerous that joinder of all
20 members of the class is impracticable. Although the precise number of putative class members
21 has not been determined at this time, Plaintiff is informed and believes that the proposed class
22 includes thousands of members.

23 **B. Commonality**

24 74. There are questions of law and fact common to the class that predominate over any
25 questions affecting only individual putative class members. These common questions of law and
26 fact include:

- 27 a. Whether Defendants' conduct was a "fraudulent practice" within the meaning of
28 the Unfair Competition Law ("UCL"), Business & Professions Code § 17200, in
that it was likely to mislead consumers;

///

- b. Whether Defendants' conduct was an "unfair practice" within the meaning of the UCL in that it offended established public policy and is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers;
- c. Whether Defendants' conduct was an "unlawful" practice within the meaning of the UCL;
- d. Whether Defendants' conduct was likely to deceive a consumer acting reasonably in the same circumstances;
- e. Whether Defendants advertise or market the Misbranded Products in a way that is false or misleading;
- f. Whether Defendants violated California Business and Professions Code § 17500, *et seq.*;
- g. Whether Defendants violated California Civil Code § 1750, *et seq.*;
- h. Whether Plaintiff and members of the putative class are entitled to restitution, injunctive, declaratory and/or other equitable relief;
- i. Whether Defendants have been unjustly enriched through the misrepresentations alleged herein;
- j. Whether Defendants knew or should have known that the labeling representations were false;
- k. Whether Defendants negligently misrepresented, concealed, or omitted a material fact regarding the true characteristics of the Misbranded Products;
- l. Whether Defendants breached their contracts with Plaintiff and members of the putative class; and
- m. Whether Plaintiff and the members of the class sustained monetary loss.

C. Adequacy of Representation

75. Plaintiff will fairly and adequately represent and protect the interests of the class.

Counsel who represent Plaintiff and putative class members are experienced and competent in litigating class actions.

///

D. Superiority of Class Action

76. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of putative class members is not practicable, and questions of law and fact common to putative class members predominate over any questions affecting only individual putative class members. Each putative class member has been damaged and is entitled to recovery by reason of Defendant's illegal policies or practices.

77. Class-action treatment will allow those persons similarly situated to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

FIRST CAUSE OF ACTION
Unlawful Business Practices in Violation of
Business and Professions Code § 17200, *et seq.*
(on behalf of California consumers)

78. Plaintiff incorporates by reference each allegation set forth above.

79. Defendants' conduct constitutes unlawful business acts and practices under Business & Professions Code § 17200, *et seq.*

80. Defendants sold Misbranded Products in California during the class period.

81. Defendant Flowers Bakeries, LLC is a corporation and, therefore, is a “person” within the meaning of the Sherman Food Drug & Cosmetic Law, California Health & Safety Code § 109875, *et seq.* (the “Sherman Law”). The Sherman Law adopts, incorporates, and is identical to the federal Food, Drug & Cosmetic Act, 21 U.S.C. § 301, *et seq.* (“FDCA”).

82. Defendants' business practices are unlawful under § 17200, *et seq.* by virtue of Defendants' violations of the advertising provisions of Article 3 of the Sherman Law and the misbranded food provisions of Article 6 of the Sherman Law.

83. Defendants' business practices are unlawful under Business & Professions Code § 17200, *et seq.* by virtue of Defendants' violations of § 17500, *et seq.*, which forbids untrue and misleading advertising.

84. Defendants' business practices are unlawful under Business & Professions Code § 17200, *et seq.* by virtue of Defendants' violations of the Consumers Legal Remedies Act, Cal.

1 Civ. Code § 1750, *et seq.*

2 85. Under California law, a food product that is misbranded cannot legally be
3 manufactured, advertised, distributed, held or sold. Misbranded products cannot be legally sold or
4 possessed, have no economic value, and are legally worthless. Indeed the sale, purchase or
5 possession of misbranded food is a criminal act in California and the FDA even threatens food
6 companies with seizure of misbranded products.

7 86. Defendants sold Plaintiff and members of the putative class Misbranded Products
8 that were not capable of being sold or legally held and which had no economic value and were
9 legally worthless. Plaintiff and each putative class member paid a premium price for the
10 Misbranded Products.

11 87. As a result of Defendants' illegal business practices, Plaintiff and the members of
12 the putative class are entitled to an order enjoining such future conduct and such other orders and
13 judgments which may be necessary to disgorge Defendants' ill-gotten gains and to restore to any
14 putative class member any money paid for the Misbranded Food Products.

15 88. Defendants' unlawful business acts present a threat and reasonable continued
16 likelihood of injury to Plaintiff and each member of the putative class.

17
18 **SECOND CAUSE OF ACTION**
19 **Unfair Business Practices in Violation of**
20 **Business & Professions Code § 17200, *et seq.***
21 **(on behalf of California consumers)**

22 89. Plaintiff incorporates by reference each allegation set forth above.

23 90. The UCL defines unfair business competition to include any "unlawful, unfair or
24 fraudulent" act or practice, as well as any "unfair, deceptive, untrue or misleading" advertising.
25 Cal. Bus. & Prof. Code § 17200.

26 91. A business act or practice is "unfair" under the UCL if the reasons, justifications,
27 and motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged
28 victims.

92. Defendants' conduct as set forth herein constitutes unfair business acts and
practices.

1 93. Defendants sold Misbranded Products in California during the class period.

2 94. Plaintiff and the members of the putative class suffered a substantial injury by
3 virtue of buying Defendants' Misbranded Products, which they would not have purchased absent
4 Defendants' illegal conduct.

5 95. Defendants' deceptive marketing, advertising, packaging and labeling of their
6 Misbranded Products and their sale of unsalable Misbranded Products that were illegal to possess
7 were of no benefit to consumers, and the harm to consumers and competition is substantial.

8 96. Defendants sold Plaintiff and the members of the putative class Misbranded
9 Products that were not capable of being legally sold or held and that had no economic value and
10 were legally worthless. Plaintiff and the members of the putative class paid a premium price for
11 the Misbranded Products.

12 97. Plaintiff and the members of the putative class who purchased Defendant's
13 Misbranded Products had no way of reasonably knowing that the products were misbranded and
14 were not properly marketed, advertised, packaged and labeled, and thus could not have reasonably
15 avoided the injury each of them suffered.

16 98. The consequences of Defendants' conduct as set forth herein outweigh any
17 justification, motive or reason therefor. Defendants' conduct is and continues to be unlawful,
18 unscrupulous and contrary to public policy, and is substantially injurious to Plaintiff and the
19 members of the putative class.

20 99. As a result of Defendants' conduct, Plaintiff and the members of the putative class,
21 pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future
22 conduct by Defendants, and such other orders and judgments which may be necessary to disgorge
23 Defendants' ill-gotten gains and restore any money paid for Defendants' Misbranded Products by
24 Plaintiff and the members of the putative class.

25
26 **THIRD CAUSE OF ACTION**
27 **Fraudulent Business Practices in Violation of**
28 **Business and Professions Code § 17200, et seq.**
 (on behalf of California consumers)

100. Plaintiff incorporates by reference each allegation set forth above.

101. Defendants' conduct as set forth herein constitutes fraudulent business practices under California Business and Professions Code sections § 17200, *et seq.*

102. Defendants sold Misbranded Products in California during the class period.

103. Defendants' misleading marketing, advertising, packaging, and labeling of the Misbranded Products and misrepresentation that the products were capable of sale, capable of possession, and not misbranded were likely to deceive reasonable consumers, and in fact, Plaintiff and the members of the putative class were deceived. Defendants have engaged in fraudulent business acts and practices.

104. Defendants' fraud and deception caused Plaintiff and the members of the putative class to purchase Defendants' Misbranded Products that they would otherwise not have purchased had they known the true nature of those products.

105. Defendants sold Plaintiff and the members of the putative class Misbranded Products that were not capable of being sold or legally held and that had no economic value and were legally worthless. Plaintiff and the members of the putative class paid a premium price for the Misbranded Products.

106. As a result of Defendants' conduct as set forth herein, Plaintiff and each member of the putative class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future conduct by Defendants, and such other orders and judgments which may be necessary to disgorge Defendants' ill-gotten gains and restore any money paid for Defendants' Misbranded Products by Plaintiff and the members of the putative class.

FOURTH CAUSE OF ACTION
Misleading Advertising in Violation of
Business and Professions Code § 17500, *et seq.*
(on behalf of California consumers)

107. Plaintiff incorporates by reference each allegation set forth above.

108. Plaintiff asserts this cause of action for violations of California Business and Professions Code § 17500, *et seq.*, for misleading and deceptive advertising against Defendant.

109. Defendants sold Misbranded Products in California during the class period. Defendants engaged in a scheme of offering Defendants' Misbranded Products for sale to Plaintiff

1 and the members of the putative class by way of, *inter alia*, product packaging and labeling.
2 These materials misrepresented and/or omitted the true contents and nature of Defendants'
3 Misbranded Products.

4 110. Defendants' advertisements and inducements were made within California and
5 come within the definition of advertising as contained in Business and Professions Code §17500,
6 *et seq.*, in that such product packaging and labeling were intended as inducements to purchase
7 Defendants' Misbranded Food Products and are statements disseminated by Defendants to
8 Plaintiff and the members of the putative class that were intended to reach the members of the
9 putative class. Defendants knew, or in the exercise of reasonable care should have known, that
10 these statements were misleading and deceptive as set forth herein.

11 111. In furtherance of its plan and scheme, Defendants prepared and distributed within
12 California via product packaging and labeling statements that misleadingly and deceptively
13 represented the composition and the nature of Defendants' Misbranded Products. Plaintiff and
14 members of the putative class necessarily and reasonably relied on Defendants' material and were
15 the intended targets of such representations.

16 112. Defendants' conduct in disseminating misleading and deceptive statements in
17 California to Plaintiff and the members of the putative class was and is likely to deceive
18 reasonable consumers by obfuscating the true composition and nature of Defendants' Misbranded
19 Products, in violation of the "misleading prong" of California Business and Professions Code §
20 17500, *et seq.*

21 113. As a result of Defendants' violations of the "misleading prong" of California
22 Business and Professions Code § 17500, *et seq.*, Defendants have been unjustly enriched at the
23 expense of Plaintiff and the members of the putative class. Misbranded products cannot be legally
24 sold or held and have no economic value and are legally worthless. Plaintiff and the members of
25 each class paid a premium price for the Misbranded Products.

26 114. Plaintiff and the members of the putative class, pursuant to Business and
27 Professions Code § 17535, are entitled to an order enjoining such future conduct by Defendants,
28 and such other orders and judgments which may be necessary to disgorge Defendants' ill-gotten

1 gains and restore any money paid for Defendants' Misbranded Food Products by Plaintiff and the
2 members of the putative class.

3
4 **FIFTH CAUSE OF ACTION**
5 **Untrue Advertising in Violation of**
6 **Business and Professions Code § 17500, *et seq.***
7 **(on behalf of California consumers)**

8 115. Plaintiff incorporates by reference each allegation set forth above.

9 116. Plaintiff asserts this cause of action against Defendants for violations of California
10 Business and Professions Code § 17500, *et seq.*, regarding untrue advertising. Defendants sold
11 Misbranded Products in California during the class period.

12 117. Defendant engaged in a scheme of offering Defendants' Misbranded Products for
13 sale to Plaintiff and the members of the putative class by way of product packaging and labeling.
14 These materials misrepresented and/or omitted the true contents and nature of Defendants'
15 Misbranded Products. Defendants' advertisements and inducements were made in California and
16 come within the definition of advertising as contained in Business and Professions Code §17500,
17 *et seq.*, in that the product packaging and labeling were intended as inducements to purchase
18 Defendants' Misbranded Products and are statements disseminated by Defendants to Plaintiff and
19 the members of the putative class. Defendants knew, or in the exercise of reasonable care should
20 have known, that these statements were untrue.

21 118. In furtherance of its plan and scheme, Defendants prepared and distributed in
22 California via product packaging and labeling statements that falsely advertise the composition of
23 Defendants' Misbranded Products, and falsely misrepresented the nature of those products.
24 Plaintiff and the members of the putative class were the intended targets of such representations
25 and would reasonably be deceived by Defendants' materials.

26 119. Defendants' conduct in disseminating untrue advertising throughout California
27 deceived Plaintiff and the members of the putative class by obfuscating the contents, nature, and
28 quality of Defendants' Misbranded Products, in violation of the "untrue prong" of California
Business and Professions Code § 17500.

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120. As a result of Defendants' violations of the "untrue prong" of California Business and Professions Code § 17500, *et seq.*, Defendants have been unjustly enriched at the expense of Plaintiff and the members of the putative class. Misbranded products cannot be legally sold or held and have no economic value and are legally worthless. Plaintiff and the members of the putative class paid a premium price for the Misbranded Products.

121. Plaintiff and the members of the putative class, pursuant to Business and Professions Code § 17535, are entitled to an order enjoining such future conduct by Defendants, and such other orders and judgments which may be necessary to disgorge Defendants' ill-gotten gains and restore any money paid for Defendants' Misbranded Food Products by Plaintiff and the members of the putative class.

SIXTH CAUSE OF ACTION
Violation of the Consumers Legal Remedies Act,
California Civil Code §§ 1750, *et seq.*
(on behalf of California consumers)

122. Plaintiff incorporates by reference each allegation set forth above.

123. This cause of action is brought pursuant to the Consumers Legal Remedies Act, California Civil Code §§ 1750, *et seq.* (the "CLRA").

124. Plaintiff and each member of the putative class are "consumers" within the meaning of Civil Code § 1761(d).

125. The purchases of the Defendants' Misbranded Products by consumers constitute "transactions" within the meaning of Civil Code § 1761(e), and the Misbranded Products offered by Defendants constitutes "goods" within the meaning of Civil Code § 1761(a).

126. Defendant has violated, and continue to violate, the CLRA in at least the following respects:

- a. In violation of Civil Code § 1770(a)(5), Defendants represented that the Misbranded Products had characteristics which they did not have;
- b. In violation of Civil Code § 1770(a)(7), Defendants represented that the Misbranded Products were of a particular standard, quality, or grade, of which they were not; and

1 c. In violation of Civil Code § 1770(a)(9), Defendants advertised the Misbranded
2 Products with the intent not to provide what they advertised.

3 127. As a direct and proximate cause of Defendants' violation of the CLRA as alleged
4 hereinabove, Plaintiff and members of the putative class have suffered damages, including but not
5 limited to inducing them to purchase the Misbranded Products and pay a premium therefor where
6 such products did not conform to Defendants' representations, thereby causing Plaintiff and
7 putative class members to incur a pecuniary loss.

8 128. Pursuant to California Civil Code § 1780, Plaintiff, on behalf of herself and the
9 putative class, seeks damages, restitution, injunctive relief, punitive damages, attorneys' fees, and
10 the costs of litigation.

11 **SEVENTH CAUSE OF ACTION**
12 **Restitution Based on Quasi-Contract/Unjust Enrichment**
(on behalf of consumers nationwide)

13 129. Plaintiff incorporates by reference each allegation set forth above. Plaintiff pleads
14 this cause of action in the alternative.

15 130. Defendants' conduct in enticing Plaintiff and putative class members to purchase
16 the Misbranded Products through their false and misleading advertising and packaging as
17 described throughout this Complaint is unlawful because the statements contained on Defendants'
18 product labels are untrue. Defendants took monies from Plaintiff and members of the putative
19 class for products based on the identified representations, even though the Misbranded Products
20 did not conform to those representations.

21 131. Defendants have been unjustly enriched at the expense of Plaintiff and the putative
22 class as result of Defendants' unlawful conduct alleged herein, thereby creating a quasi-
23 contractual obligation on Defendants to restore these ill-gotten gains to Plaintiff and putative class
24 members.

25 132. As a direct and proximate result of Defendants' unjust enrichment, Plaintiff and
26 putative class members are entitled to restitution or restitutionary disgorgement, in an amount to
27 be proven at trial.

28 ///

EIGHTH CAUSE OF ACTION
Common Law Fraud
(on behalf of consumers nationwide)

133. Plaintiff incorporates by reference each allegation set forth above. Plaintiff pleads this cause of action in the alternative.

134. Defendants willfully, falsely, and knowingly misrepresented material facts relating to the character and quality of the Misbranded Products. These misrepresentations are contained in various media advertising and packaging disseminated or caused to be disseminated by Defendants, and such misrepresentations were reiterated and disseminated by officers, agents, representatives, servants, or employees of Defendants, acting within the scope of their authority, and employed by Defendants to merchandise and market the Misbranded Products.

135. Defendants' misrepresentations were the type of misrepresentations that are material (i.e. the type of misrepresentations to which a reasonable person would attach importance and would be induced to act thereon in making purchasing decisions).

136. Defendants knew that the misrepresentations alleged herein were false at the time they made them and/or acted recklessly in making such misrepresentations.

137. Defendants intended that Plaintiff and members of the putative class rely on the misrepresentations alleged herein and purchase the Misbranded Products.

138. Plaintiff and members of the putative class reasonably and justifiably relied on Defendants' misrepresentations when purchasing the Misbranded Products, were unaware of the existence of facts that Defendants suppressed and failed to disclose, and, had the facts been known, would not have purchased the Misbranded Products and/or purchased them at the prices at which they were offered.

139. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and members of the putative class have suffered and continue to suffer economic losses and other general and specific damages, including, but not necessarily limited to, the monies paid to Defendants, and any interest that would have accrued on those monies, all in an amount to be proven at trial.

///

1 140. Moreover, in that, at all times herein mentioned, Defendants intended to cause or
 2 acted with reckless disregard of the probability of causing damage to Plaintiff and members of the
 3 putative class, and because Defendants was guilty of oppressive, fraudulent and/or malicious
 4 conduct, Plaintiff and members of the putative class are entitled to an award of exemplary or
 5 punitive damages against Defendants in an amount adequate to deter such conduct in the future.

6 **NINTH CAUSE OF ACTION**
 7 **Negligent Misrepresentation**
 8 ***(on behalf of consumers nationwide)***

9 141. Plaintiff incorporates by reference each allegation set forth above. Plaintiff pleads
 10 this cause of action in the alternative to the foregoing.

11 142. Defendants, directly or through its agents and employees, made false
 12 representations to Plaintiff and members of all classes.

13 143. Defendants owed a duty to Plaintiff and members of all classes to disclose the
 14 material facts set forth above about the Misbranded Products.

15 144. In making the representations, and in doing the acts alleged above, Defendants
 16 acted without any reasonable grounds for believing the representations were true, and intended by
 17 said representations to induce the reliance of Plaintiff and members of all classes.

18 145. Plaintiff and members of all classes reasonably and justifiably relied on
 19 Defendants' misrepresentations when purchasing the Misbranded Products, were unaware of the
 20 existence of facts that Defendants suppressed and failed to disclose and, had the facts been known,
 21 would not have purchased the Misbranded Products and/or purchased them at the price at which
 22 they were offered.

23 146. As a direct and proximate result of these misrepresentations, Plaintiff and members
 24 of all classes have suffered and continue to suffer economic losses and other general and specific
 25 damages, including but not limited to the amounts paid for the Misbranded Products, and any
 26 interest that would have accrued on those monies, all in an amount to be proven at trial.

27 ///

28 ///

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TENTH CAUSE OF ACTION
Breach of Contract
(on behalf of consumers nationwide)

147. Plaintiff incorporates in this claim for relief each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

148. Plaintiff and members of both classes had a valid contract, supported by sufficient consideration, pursuant to which Defendants were obligated to provide the products which did not contain azodicarbonamide or, as to the breads labeled "All Natural," any synthetic, artificial, or highly processed ingredient or color additive, and/or which were whole wheat breads, as represented by Defendants.

149. Defendants materially breached its contract with Plaintiff and members of both classes by providing the Misbranded Products labeled "All Natural" which were not free from artificial, synthetic, highly processed ingredients and color additives and some of which in fact contained harmful chemicals, including azodicarbonamide, the "yoga mat" substance, as alleged above. Additionally, Defendants' Honey Wheat and Whitewheat Breads are not whole wheat breads, as is represented on the product packaging..

150. As a result of Defendants' breach, Plaintiff and members of the putative class were damaged in that they received a product with less value than one for which they paid. Plaintiff and members of both classes have suffered and continue to suffer economic losses and other general and specific damages, including but not limited to the amounts paid for the Misbranded Products, and any interest that would have accrued on those monies, all in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and on behalf of the other members of the putative class, prays as follows:

A. For an order certifying that this action is properly brought and may be maintained as a class action, that Plaintiff be appointed the class representative, and that Plaintiff's counsel be appointed counsel for the class;

///

1 B. For restitution in such amount that Plaintiff and all putative class members paid to
2 purchase the Misbranded Products, or the premiums paid therefor on account of the
3 misrepresentation as alleged above, or restitutionary disgorgement of the profits Defendants have
4 obtained from those transactions;

5 C. For compensatory damages for causes of action for which they are available;

6 D. For statutory damages allowable under Civil Code § 1780;

7 E. For punitive damages for causes of action for which they are available;

8 F. For a declaration and order enjoining Defendants from advertising their products
9 misleadingly in violation of California's Sherman Food, Drug, and Cosmetic Law, and other
10 applicable laws and regulations as specified in this Complaint;

11 G. For an order awarding reasonable attorneys' fees and the costs of suit herein;

12 H. For an award of pre- and post-judgment interest;


13 I. For an order requiring an accounting for, and imposition of, a constructive trust
14 upon all monies received by Defendants as a result of the unfair, misleading, fraudulent and
15 unlawful conduct alleged herein; and

16 J. Such other and further relief as may be deemed necessary or appropriate.

17 Respectfully submitted,

18
19 DATED: October 17, 2014

COUNSELONE, PC

20
21 By 
22 Anthony J. Orshansky
23 Justin Kachadoorian
24 Attorneys for Plaintiff and the Putative
25 Class
26
27
28

JURY DEMAND

Plaintiff hereby demands a jury trial on all issues so triable.

DATED: October 17, 2014

COUNSELONE, PC

By



Anthony J. Orshansky
Justin Kachadoorian
Attorneys for Plaintiff and the Putative
Class

EXHIBIT A



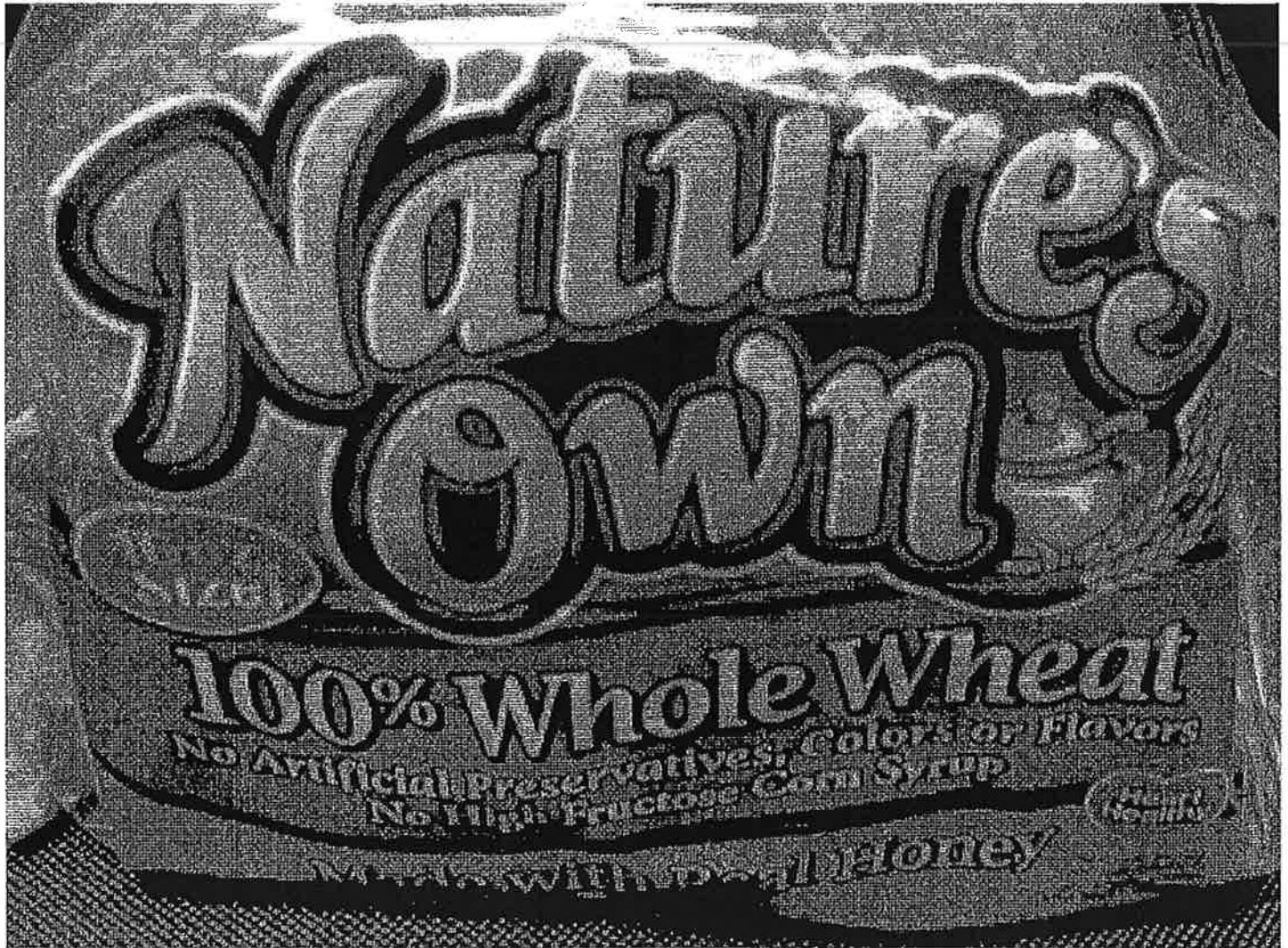






EXHIBIT B

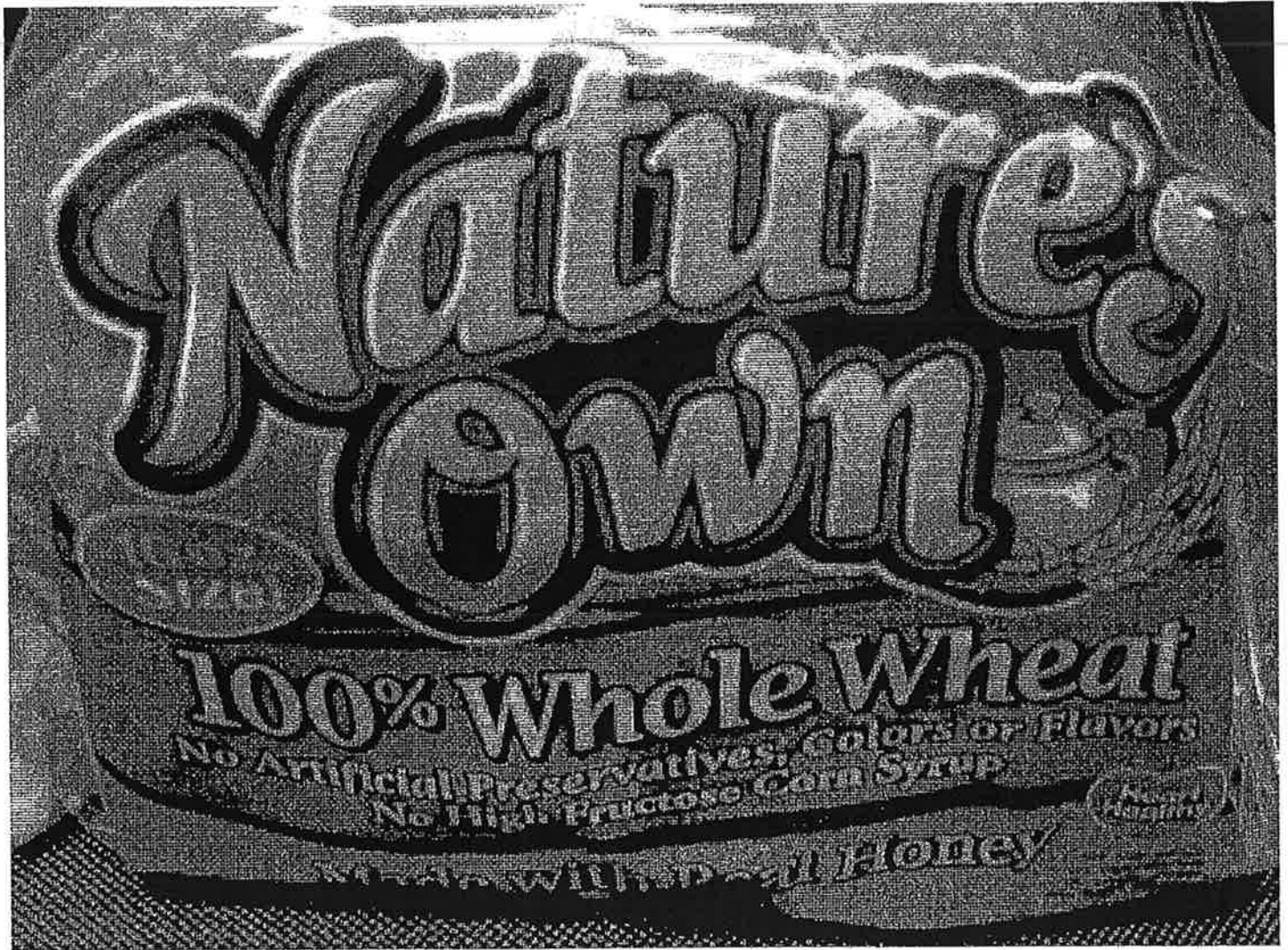




EXHIBIT C



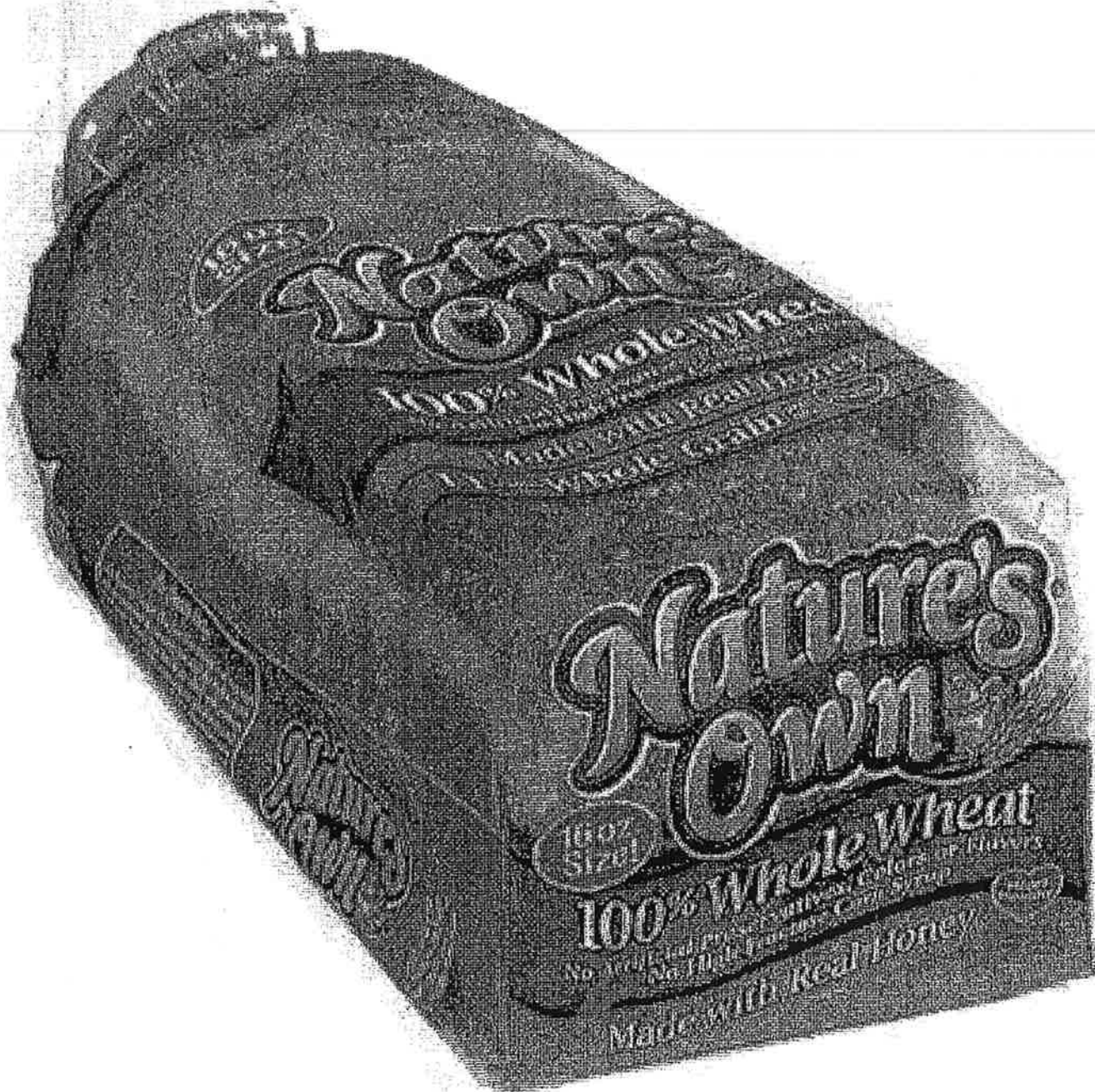


EXHIBIT D

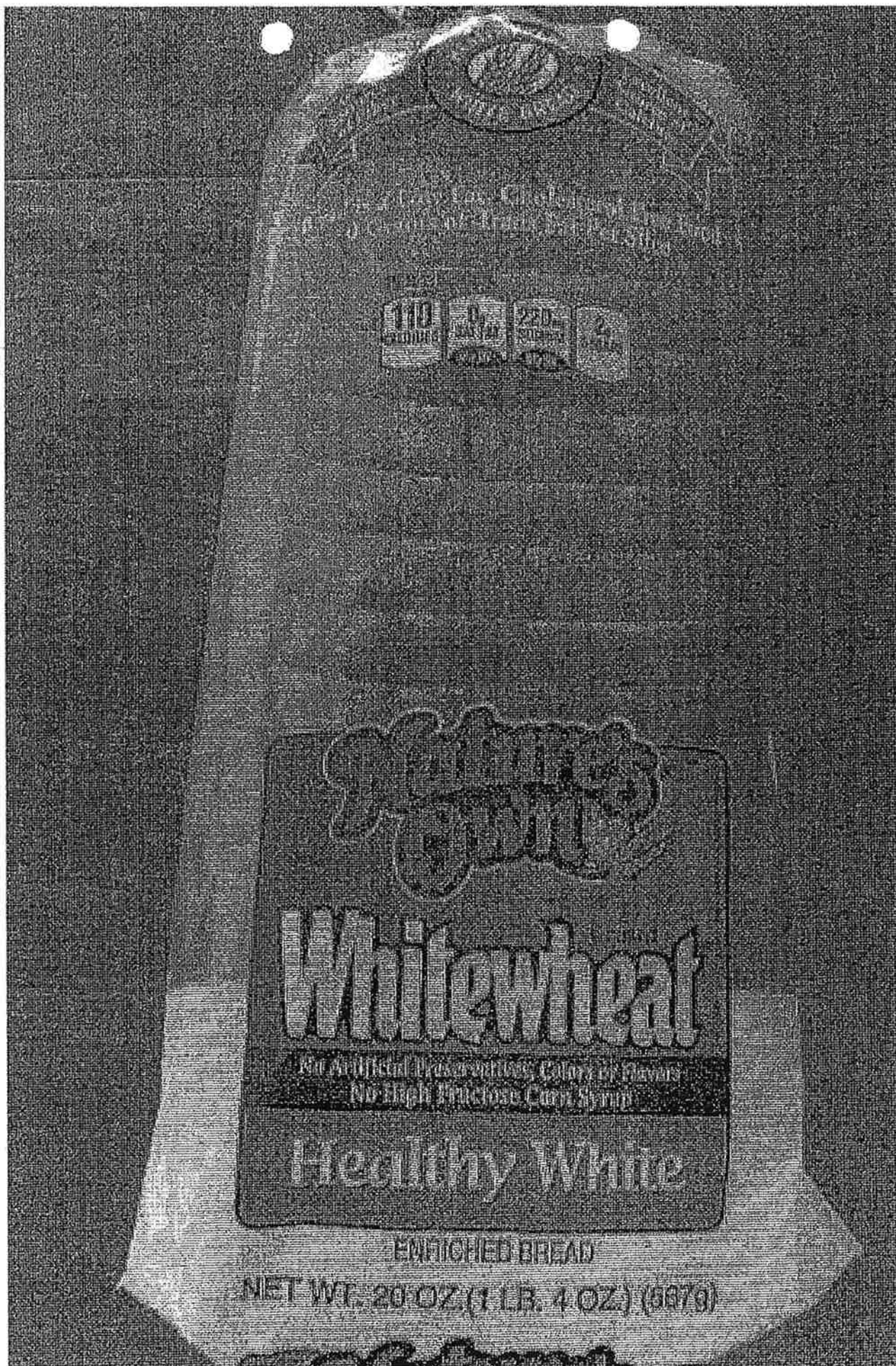
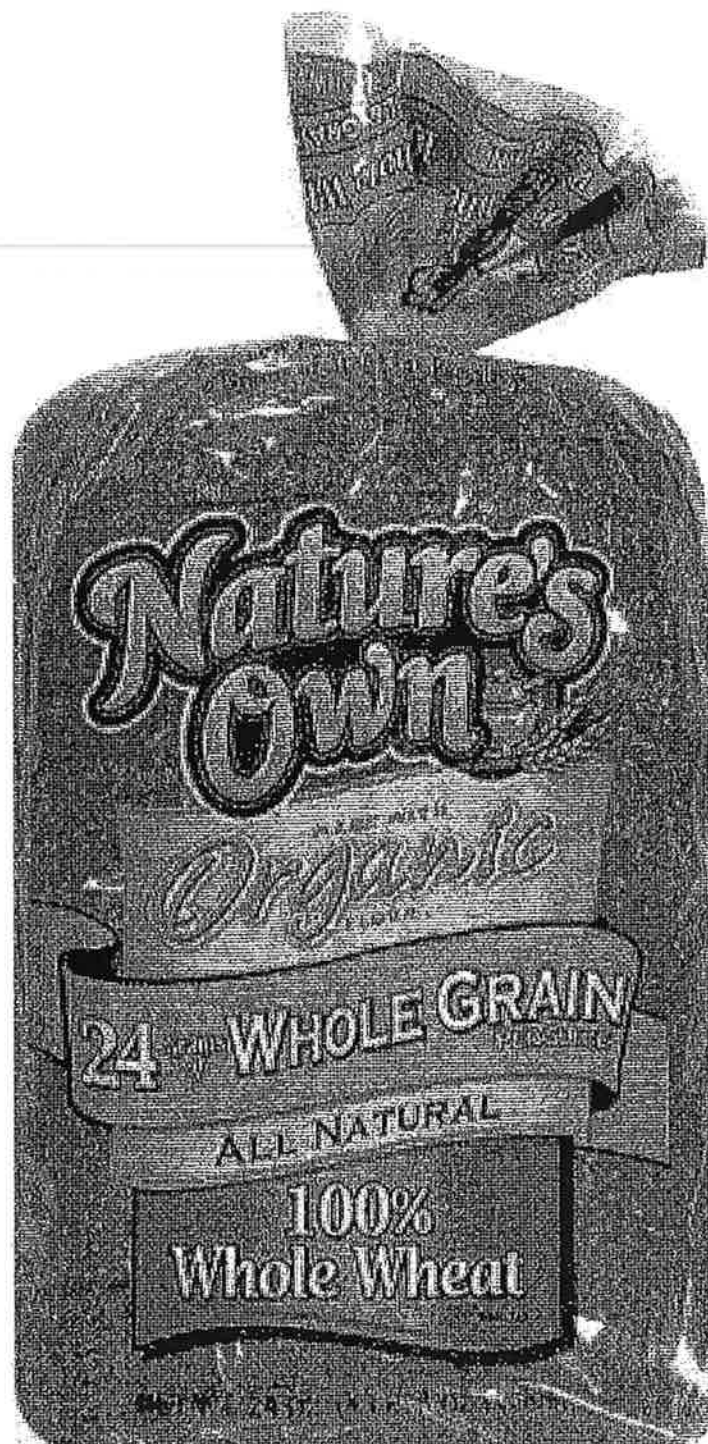
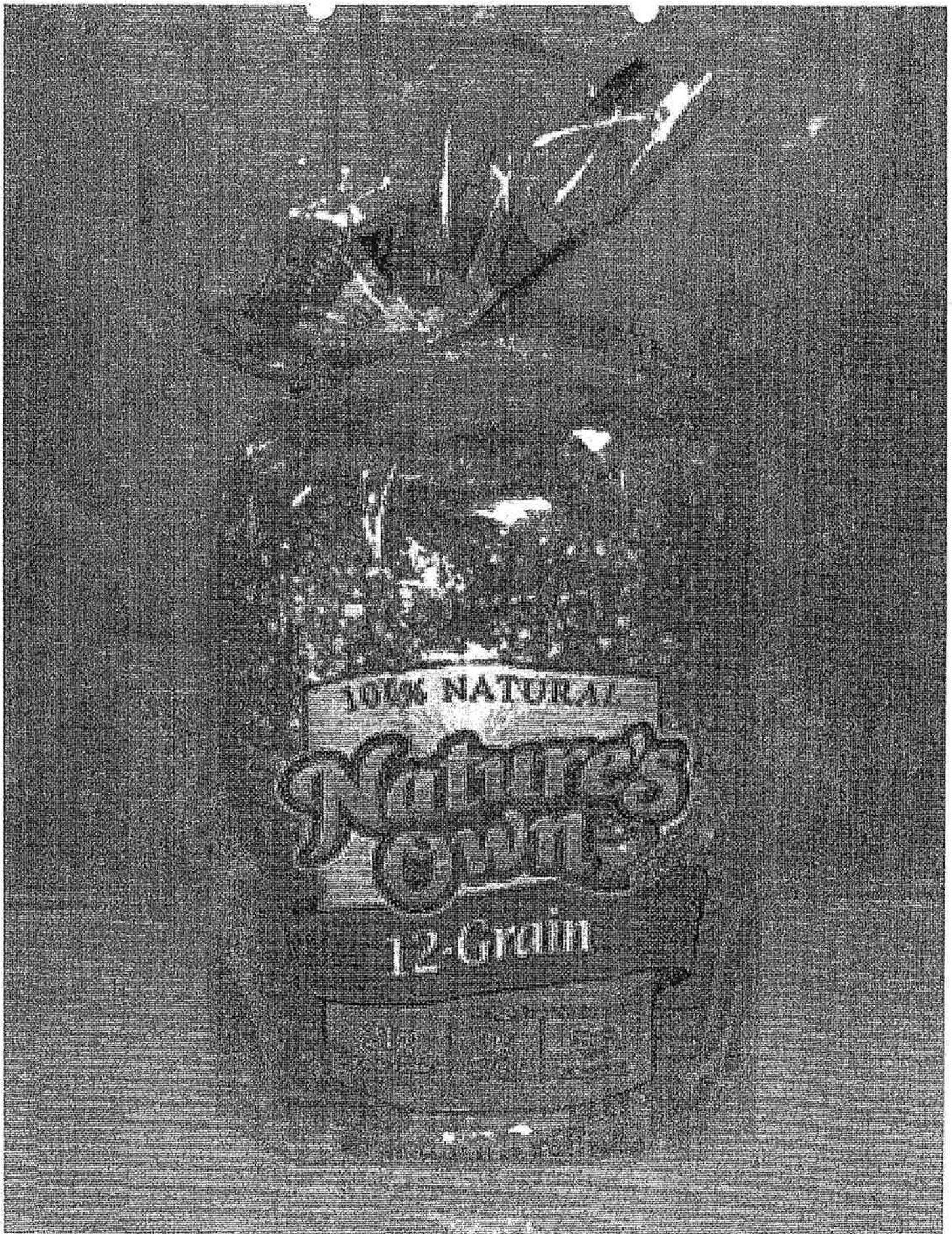




EXHIBIT E





Anything artificial is against our nature.

It could only be



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